In the High Court of Uttaranchal, at

Nainital.

F.A. No. 879/2001
(Old No. 145/1984)

State of U.P. through the Executive Engineer
P.W.D. Narendra Nagar,
Tehri Garhwal ..... Appellant.

Vs.

Daleb Singh Rawat S/o Gobar Singh
Rawat, R/o Agar Patti Dhamandsun,
District Tehri Garhwal ... Respondent.

Sri Subhash Upadhyaya, learned Standing counsel for the appellant.
Sri Rajendra Dobhal, learned counsel for the respondent.

Hon'ble B.C. Kandpal, J.

This is defendant's appeal, U/S 96 C.P.C., against the judgment and decree dated 17-12-1982, passed in O.S. No. 42 of 1982 Daleb Singh Rawat Vs. State of U.P., passed by the District Judge, Tehri Garhwal, whereby the suit of the plaintiff/respondent was decreed for the recovery of Rs. 1950/- on account of the damages to the crops of the plaintiff/respondent and Rs. 5000/- towards damages caused to his water-tank. He was also awarded *pendentilite* and future interest @ 6% per annum till the date of recovery.

2- Briefly stated the facts of the case are that the defendant/respondent is the Bhumidhar owner of 18 plots in suit measuing 6 Nalis and 8 Muthis situate in Village Agar, Patti Dhamansyu, District Tehri Garhwal. These plots were irrigated and for irrigation he had constructed a reservoir in plot No. 207. According to him he had sown the crops of maize, ginger, soyabin, pindalus, chillis, potatoes etc. The said plots were situated below the Rishikesh-Tehri motor road in between kilometers 30/31. According to

him during the month of May and June 1973, the Executive Engineer, P.W.D. Narendra Nagar started the work of extensive widening of the road for the purposes of Tehri Dam and during this process debris and big boulders rolled down in the plots and the crop and reservoir got damaged. The plaintiff approached many times to the concerned department for compensation. Ultimately the P.W.D. paid Rs. 570/- as part payment for damages. Rs. 1002/- only was paid to him for removal of the debris from the damaged field, but the reservoir was not re-constructed by the department. Therefore, the plaintiff filed a suit for recovery of Rs. 3000/- as loss of crops for the years 1979 to 1982 and also for the issuance of a mandatory injunction and in the alternative for the recovery of Rs. 14,353-30 for reconstruction of the reservoir den novo along with cost as well as pendentelite and further interest @ 12% per annum before the District Judge, Tehri Garhwal.

4- The defendant/appellant contested the suit admitting the plaintiff/respondent Bhumidhar of plots in suit. The defendant also admitted that the plaintiff was paid Rs. 1002/- only which included the compensation for crops and for reservoir and also for removal of the debris. It was also alleged that the plaintiff was also paid Rs. 570/- in 1980 as full final payment. The defendant also alleged that the final settlement was arrived at and the suit is misconceived.

5- The trial Judge framed relevant issues in the case and thereafter parties led evidence in the case. The trial Judge decreed the suit of the plaintiff/respondent for recovery of Rs. 1950/- as damages to his crops and Rs. 5000/- towards damage caused to his water-tank

along with pendentelite and future interest @ 6% per annum.

6- Feeling aggrieved, the State through Executive Engineer, P.W.D., Narendra Nagar has come up in appeal before the Allahabad High Court, which was transferred to this court after creation of new State.

7- Heard learned counsel for the parties and perused the record.

8- The first question of determination in this appeal is whether the plots/land in question belong to the plaintiff/respondent or not.

9- It has been pleaded by the defendant/appellant that the land in question does not belong to the plaintiff/respondent but at the same time the defendant/appellant has also not pleaded in the written statement that as to whom the land in question belong. According to the own admission of the defendant/appellant, the compensation towards the loss of the crops standing on the land in question has been paid by the Government. Therefore, the denial of the defendant/appellant of this fact that the plots/land in question does not belong to the plaintiff/respondent is not sustainable. The plaintiff/respondent has examined himself as P.W.1 (Daleb Singh) and Ram Chandra Uniyal (P.W.2) and has produced certain documents in support of his case and from the perusal of the statement of Daleb Singh (P.W.1) and Ram Chandra Uniyal (P.W.2) as well as the original sale deed executed by one Chandan Singh in favour of the plaintiff/respondent, which is available as Ext. 8 on the record, it is established that by way of exchange,

the plots in questions were obtained by the plaintiff/respondent from one Chandan Singh and thereafter the plaintiff/respondent had been cultivating the said land throughout since the time of the exchange without resorting to mutation being in his favour and ultimately the plaintiff/respondent got the sale deed executed in his favour in the year 1982 and became full-fledged owner thereof. Daleb Singh (P.W.1) and Ram Chandra Uniyal (P.W.2) had been cross-examined at length but nothing material could be shown in their deposition to discredit their testimony. The defendant/appellant on the other hand did not adduce any evidence whatsoever to disapprove the case of the plaintiff/respondent either oral or documentary.

10- The argument on behalf of the defendant/appellant was that the name of the plaintiff/respondent was not recorded in the revenue papers, therefore, his ownership has not been established.

11- This argument does not carry any force because the mutation is done in the revenue record only for fiscal purposes and even if for some reason or the other, the mutation is not done, it would not affect the right and title of a person in respect of the land in question. I, therefore, come to the conclusion that the plaintiff/respondent has established his ownership over the land in question by way of cogent and reliable evidence.

12- Apart of the aforesaid evidence, it is also clear from the record that the water tank of the plaintiff/respondent as well as standing crops on his plots/land in question were taken away on account of

debris, including the boulders having fallen down on them when they were rolled down by the defendant/appellant and its employees while widening the road in question. The evidence further shows that some money was paid by the department to the plaintiff/respondent for the removal of the debris as well as for the damages caused to the plaintiff/respondent.

13- None of the witnesses examined on behalf of the defendant/appellant have alleged even a single word that the plaintiff/respondent had not suffered any damage in respect of the crops in the year for which the damages are claimed.

14- Therefore, in view of the discussion made above as well as from the perusal of the entire evidence on record, it is clearly established that in addition to the amount already paid by the defendant/appellant to the plaintiff/respondent towards the cost of removal of debris and in part satisfaction of the damages for the crops which were then standing on the plots of the plaintiff/respondent. The plaintiff/respondent was entitled to recover the amount of Rs. 1950/- in respect of the crops as well as an amount of Rs. 5,000/- in respect of the damages caused to the water tank in question. The evidence on record clearly shows that the tank belonging to the plaintiff/respondent was not properly prepared by the defendant/appellant and the crops on the plots in question could not be cultivated well on account of the damage to the water tank.

15- The suit of the plaintiff/respondent has been rightly decreed by the court below. I also do not find any infirmity in the impugned judgment and decree.

16- Thus the appeal lacks merit and is liable to be dismissed.

17- Accordingly, the appeal is dismissed.

(B.C. Kandpal, J.)

06.09.2006
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